

Law offices of

JONATHAN S. HORNE

FAX TRANSMITTAL

TO: BRENDA BUXTONFAX NUMBER: 510 415-464-1015 0470FROM: JSDATE: 11/12PAGES: 1

COMMENTS:

Brenda - To help with your discussions with Peter Douglas -

- ① Coastal Commission condition re: Black Tor. The phrase "determine that an alternative easement could be developed with the same funds" is clearly consistent with using funds for acquisition.
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Peter indicates he would recommend releasing the Black Tor funds in exchange for a built easement. No reference to limiting use for construction.

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STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION

631 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105-3973
(415) 543-8555
Hearing Impaired/TDD (415) 896-1825

Filed: 12/20/89
49th Day: 2/7/90
180th Day: 6/18/90
270th Day: 9/16/90
Staff Report: 6/29/90
Hearing Date: 7/12/90



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REGULAR CALENDAR
RECOMMENDATION AND FINDINGS

Th 86

APPLICATION NO.: 5-89-1197

APPLICANT: J.A. Edwards Trustee for J.A. Edwards Trust, 1989
AGENT: Marvin Burns, De Castro,
West, Chodorow, and Burns

PROJECT LOCATION: 27944 Pacific Coast Highway, Malibu,
Los Angeles County. APN 4460-32-12

PROJECT DESCRIPTION: Subdivision of 4.82 acre parcel into two parcels, of
2.48 and 2.34 acres

Lot area: 4.82 acres
Zoning: R-1-20,000
Plan designation: 2 du acre (bluff top);
1 du/2 acre beach
Project density: 2 acres per du gross

SITE: 27944 Pacific Coast Highway, Malibu, Los Angeles County
APN 4460-32-12

LOCAL APPROVALS RECEIVED: Parcel Map No. 14882 and CUP No. 2210, Map dated
December 9, 1982, extended to February, 1989, and
suspended indefinitely by the County.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions the
application for subdivision of a beachfront lot downcoast of Paradise Cove in
the Malibu area of Los Angeles County.

SUBSTANTIVE FILE DOCUMENTS:

1. All staff reports, findings, and materials part of applications No.
5-88-170 (Black Tor) and No. 5-89-161 (Black Tor).

STAFF NOTE:

The recommendation before the Commission is to approve the application with
the condition to include provisions to mitigate impacts to public access from

TOTAL P.01

5-89-1197

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a subdivision of shorefront land. (Another related permit, 5-89-287, for construction of a beachfront recreation room, a carport and holding tank will be before the Commission at a future hearing.) The applicant also revised the application to include a minor change in the proposed configuration of the subdivision. The proposed staff recommendation therefore also recommends a condition to require submittal of a tentative map approved by the County.

Staff is recommending alternatives to mitigate access impacts resulting from the subdivision which will result in either a dedication of land on site for public access or the development of access facilities at another existing nearby vertical easement. The State Coastal Conservancy previously presented an estimate of \$337,928 for the cost to develop an existing easement the Conservancy presently holds at the Chiate-Wildman site, about 420 feet downcoast from the subject site. By letter of 6/13/90, the applicant submitted their own estimate of costs to improve the Chiate-Wildman easement totally \$236,054, and proposed to pay \$236,054 for the costs of improvements as mitigation for the effects of both projects proposed by the applicant on the subject site. (However, the recreation room permit is not yet before the Commission for review.) Estimates for the provision of public access improvements at the Chiate-Wildman site differ. It appears that some of the significant differences in the two estimates by the Conservancy's consultant and the applicant's consultant are the following: 1) the location and extent of retaining walls necessary; 2) the manner and extent of the proposed bridging of a ravine area (the Conservancy estimate is based on stairways and a 200' stretch of "bridgelike" structure; the applicant proposes a smaller 25 foot bridge with stairs and retaining walls); and, 3) the amount of design contingency fees.

Because these differences appear significant, the staff recommendation provides the option for the applicant to construct the improvements themselves or reconcile the cost of construction with the State Coastal Conservancy to assure provision of the access facilities.

This staff recommendation also includes language that would allow use of the funds at an alternative location provided it assures equivalent access to the same general beach area. Normally the Commission has not favored in lieu fee payments unless a relevant project capable of achievement had already been designated and work instituted. In this case, staff recommends that the condition be adopted because it will result in either provision of an access easement or assurances to construct improvements at an existing easement.

When this site was before the Commission under 5-77-170 in September, 1988, the Commission expressed its concern about the lack of public access in the Paradise Cove area. The application now before the Commission would be conditioned to include an option allowing an alternative mitigation to the direct provision of access in response to the adverse impacts of this shoreline subdivision.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution and findings:

TOTAL P.01

offer of dedication of vertical access along the route identified in the 9-2-90 staff recommendation on Permit 5-88-170; or,

- b. Provide evidence of payment of funds to the State Coastal Conservancy in an interest-bearing account for the sole purpose of constructing public access improvements. The amount of funds shall be either 1) \$337,928 pursuant to the 2/23/90 estimate prepared by the CGH Group for the State Coastal Conservancy of the costs of improvements necessary and sufficient for public use of the Chiate-Wildman easement, or 2) if verified in writing by the Executive Officer of the State Coastal Conservancy to the Executive Director of the Commission, payment in an amount of no less than \$236,000 nor more than \$337,928 determined by the State Coastal Conservancy as necessary and sufficient to develop the same improvements at Chiate-Wildman or an alternative easement to the same general beach area, generally between Paradise Cove and Escondido Creek. The funds shall be specifically for construction of access improvements at the Chiate-Wildman easement unless the Executive Officer of the State Coastal Conservancy and the Executive Director of the Commission determine that an alternative easement could be developed with the same funds that provides equivalent access to the same beach area. If at the end of two years from the date of issuance of the permit the funds have not been expended for the physical development of improvements at the Chiate-Wildman easement or an alternative easement to the same beach area determined acceptable by the Executive Director of the Commission and the Executive Officer of the State Coastal Conservancy then the Commission on its own initiative or at the request of the Conservancy, may direct the Conservancy to allocate the funds for opening an existing improved accessway not yet open to the public in the same beach area between Paradise Cove and Escondido Creek. Such funds shall be redirected only if it is determined by future action of the Commission that physical improvements to an existing easement are not feasible or necessary to provide adequate access to this beach area.
- c. Cause improvements of the Chiate-Wildman easement necessary and sufficient for public use of said easement to be made to the satisfaction of the State Coastal Conservancy at the applicant's expense.

Site plans for any access facilities proposed will require separate coastal permit review.

signature

Supplement

or a proposed Holiday Inn near the mouth of the San Luis Rey River in San Diego County. The Commission based its denial in significant part on the finding that "the cumulative effect of this and other projects in the area could adversely affect the valuable wildlife habitat at the mouth of the San Luis Rey River." In upholding the Commission's reliance upon its analysis of the cumulative impact of the proposed development, the court held that

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at Harbors Beaches & Park

Supplement

September 11, 1990

Wildman easement was highly problematic, unlikely to ever occur, and more appropriate alternatives were available for promoting public access to Escondido Beach. Mr. Douglas indicated you concurred with his assessment. Mr. Douglas then indicated the Commission would follow the Conservancy's lead in selecting a more appropriate access site for development with the Black Tor funds which could be combined with a comparable fund created by the Wildmans. Mr. Douglas indicated the funds could be used to develop existing easements or for acquisition of new easement sites.

The Wildmans will take whatever further action would facilitate resolution of this intractable problem. The Wildmans are prepared to cause the preparation of any feasibility studies or other reviews you determine to be appropriate regarding prospective alternative sites. The Wildmans are perfectly willing to utilize your own consultants (e.g. Gary Hayden) or any other reputable analysts. The Wildmans previously obtained a feasibility studies regarding the development of the vertical access easement and parking lot easement on the Wildman property. These studies are available for your review at any time.

I am also enclosing a copy of Ken Chiate's letter to the Coastal Commission which sets forth his concerns regarding the development of the Wildman easement. Ken Chiate is also highly motivated to resolve this matter and will be joining us in tomorrow's meeting.

I am pleased we are finally making progress towards resolving this matter in a way which will be beneficial to all concerned.

Very truly yours,


JONATHAN S. HORNE

cc: Donahue Wildman
Lee Marsh, Esq.
Peter Douglas ✓
Marcia Grimm, Esq.
Wendy Watanabe, Esq.
Kenneth Chiate, Esq.
Linda Locklin

at Harbors Beaches + P.B. - Supermarket

California State Coastal Conservancy

30 Broadway

Suite 1100

Oakland, California 94612

Re: Chiate/Wildman Easements
27910-27920 Pacific Coast Highway, Malibu, CA

Dear Mr. Grenell:

I am extremely pleased to propose a feasible program to achieve our collective objective of promoting appropriate public access to Escondido Beach. Since our last meeting Roger Wolk, Ken Chiate and I have scoured the Escondido Beach area attempting to locate a suitable location for developing a five car parking facility proximate to Escondido Beach. As you are aware, this area includes some of the most expensive and highly built out real estate in the world. There is extremely little vacant, developable property that would be economically feasible for development. Any vacant parcel even remotely buildable will cost in excess of \$1,000,000.

After a considerable search we were extremely fortunate to locate a situation which is well suited to the Conservancy's needs. The proposed site (the "Site") is located approximately 200 yards upcoast from Escondido Beach and across Pacific Coast Highway proximate to a coastal accessway commonly known as the Mintz easement. We have previously provided Brenda with a map and photographs further identifying the Site. The Site is approximately 120 feet long and 25 feet wide. The owners have offered to sell us an easement in perpetuity over the Site for a cost of \$600,000.00.

The Site is predominantly flat but will require a degree of slope retention on the interior side. The Site is adjacent to the entry road to a subdivision project being constructed above the adjoining bluffs. Development of a parking facility at the Site will not present any potential public/private conflicts because no other residential or commercial development is situated near this site.

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...did confirm we could acquire and develop an easement over the Site without processing a subdivision map. In our prior communications your staff has indicated an easement in perpetuity would be adequate for the Conservancy's purposes.

As you are no doubt aware, on January 9, 1991, the Coastal Commission approved a \$50,000 grant to the Surfrider Foundation to operate and maintain the Mintz easement. At the March 19, 1991, Coastal Commission hearings, Madeline Glickfeld specifically addressed the public safety issues of locating parking across PCH from the Mintz easement. Ms. Glickfeld commented she was aware the Conservancy was negotiating with private parties to acquire some parking across PCH from the Mintz easement. Ms. Glickfeld indicated she was not a daredevil and yet did not feel it was unsafe to have beach users cross PCH at this location. The Coastal Commission unanimously agreed with her assessment. It is thus apparent the Coastal Commission is favorably inclined to approve our proposed settlement which will provide additional parking to service the Mintz easement and Escondido Beach.

Based upon the foregoing considerations it is now apparent the acquisition and development of the Site is feasible and now is the most advantageous time to proceed. Therefore, on behalf of Donahue Wildman, Dr. Roger Wolk and Kenneth R. Chiate (collectively the "Applicants"), we propose the following:

1. The Applicants propose to provide the Coastal Conservancy with a funding commitment sufficient to acquire and develop the Site for up to five parking spaces. If the Coastal Conservancy Board accepts the outline of this proposal, the Applicants will provide the Conservancy with an option or other form of contractual commitment for the purchase of an easement in perpetuity over the Site, a detailed budget for development of the five parking spaces and a commitment of funds sufficient to complete these two components of the project.

2. The foregoing offer is expressly contingent upon three critical conditions precedent:

law offices of

JONATHAN S. HORNE

FAX TRANSMITTAL

TO: BRENDA BOXTONFAX NUMBER: 5045-464-1015 0470FROM: JSNDATE: 11/12PAGES: 1

COMMENTS:

Brenda - To help with your discussions with Peter Douglas -

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A. The Coastal Conservancy credits the Black Tor mitigation fees towards the total costs of the project as described in Section 1.

B. The Conservancy makes its best efforts to expedite all necessary conditions for the approval of the settlement proposal including prompt scheduling and approval by both the Coastal Conservancy and the Coastal Commission. The reason for this is the seller of the Site cannot be expected to make the Site available indefinitely and we must implement this settlement within a reasonable period of time.

D. Upon receipt of the funding commitment from the Applicants, the Coastal Conservancy and the Coastal Commission would join in executing and recording the documents necessary to extinguish both the vertical access easement and parking easement located on the Wildman/Chiate parcels.

I sincerely believe the above represents a feasible manner of promoting public access to this portion of the underutilized Escondido Beach. I urge you to recommend approval of the proposal to your Board. I also urge you to explore the possibility of negotiating with the Mintz people to consolidate the two problematic parking spaces on their site with our proposed project to provide a total of seven parking spaces at the Site. This would be a very logical and efficient way to resolve two related problems.

I will be available to meet with your staff or the Board in whatever manner you deem appropriate. I look forward to your response.

CALIFORNIA - THE RESOURCES AGENCY

NIA STATE COASTAL CONSERVANCY

AV. SUITE 1100
90412-25305/464-1015
0470

June 17, 1991

Mr. Jonathan S. Horne
309 Santa Monica Blvd., Suite 307
Santa Monica, CA 90401

Dear Mr. Horne:

I am responding to your correspondence of May 2, 1991 regarding the Chiate/Wildman easement in Malibu. I have reviewed your proposal and identified several issues that need to be addressed before a recommendation can be presented to the Conservancy's Board.

First, let me correct a potential misunderstanding. The purpose of the proposed parking area is to serve the already existing accessway at Escondido Creek, not the "Mintz" or Escondido Beach Accessway at 27400 Pacific Coast Highway (PCH) which the Conservancy will be opening in conjunction with the Surfrider Foundation. Although the proposed parking area is across the street from the "Mintz" easement, the Conservancy does not want to establish a parking area that requires beach users to cross Pacific Coast Highway for obvious safety reasons. For your proposal to serve as an acceptable substitute to the easements dedicated on the applicants properties, beach visitors must be able to access the shore by crossing underneath the creek bridge. Further, there should be a clearly delineated path connecting the parking area to the bridge and signs should be placed in the parking area directing the public this way. Whether or not any further development of the existing path to the bridge is necessary should be decided by the management agency. Finally, the path must be legally available to the public. I assume that the path would lie in the CalTrans right-of-way and so approvals from this agency will need to be secured.

Second, in your letter you state that the applicants propose to "provide funding" to acquire the site and build improvements. This is contrary to what was our understanding of the applicants' role in this project. Acceptance of your proposal would require the Conservancy to devote time and resources to construction of the proposed improvements which we are not prepared to do. We are willing to recommend termination of the Conservancy's easements over the Chiate/Wildman properties only in exchange for

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JOHNATHAN HORNE
June 17, 1991
Page Two

a completed project, which means that all the permits have been obtained, the necessary title or easements acquired, the improvements built, and a maintenance organization has taken responsibility for the project. We understand your desire to complete this project as soon as possible and are willing to further discuss the timing and structure of these arrangements.

This brings me to my last area of concern. Until recently, the Conservancy understood that Beaches and Harbors had tentatively agreed to perform operation and maintenance at the proposed site. Although we do not have a commitment from Beaches and Harbors to operate and maintain the project, we are currently discussing this with them and will inform you as soon as we receive a response. You probably realize, of course, that securing an operation and maintenance entity is a critical component of this project and if Beaches and Harbors does not agree to this, then we must secure another management agency before the Conservancy can agree to any proposal.

In summary, subject to the condition that Los Angeles Beaches and Harbors or another appropriate entity agrees to accept responsibility for operation and maintenance of the site, we would be willing to recommend that the Conservancy extinguish the vertical access and parking easements on the Chiate/Wildman properties, and release to the applicants mitigation funds paid to the Conservancy under special condition 1.b of the Edwards permit No. 5-89-1197 in exchange for the following:

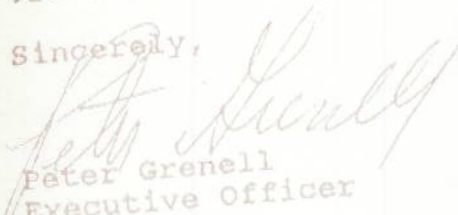
- (1) Conveyance to a public agency or nonprofit organization designated by the Conservancy of
 - a. an easement in perpetuity for public use of the site for parking; and
 - b. an easement for pedestrian access along PCH to Escondido Creek, unless evidence is provided, to the satisfaction of the Conservancy's Executive Officer, that the public currently has a legal right of access from the site to Escondido Creek; and
- (2) Construction of at least 5 parking spaces on the site, and of a clearly delineated path from the site to Escondido Creek, pursuant to plans and specifications approved by the Executive Officer and to all necessary regulatory permits and approvals.

MR. JONATHAN HORNE
June 17, 1991
Page Three

In order to present such a recommendation, it would also be necessary for my staff to review detailed cost information, as specified in my letter to Dr. Roger Wolk of December 20, 1990, a copy of which is enclosed.

I understand that Ms. Buxton and Mr. Reed Holderman are arranging a meeting with you and a representative of Los Angeles Beaches and Harbors during the last week of June or the first week of July to discuss the operation and maintenance of the site. If you have any questions before then, please contact Ms. Buxton at 415-464-1015.

Sincerely,


Peter Grenell
Executive Officer

cc: Peter Douglas, California Coastal Commission

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